IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3429 of 1992
with
SPECIAL CIVIL APPLICATION NO. 16954 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARAYAN S MOHITE - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PRADEEP PATEL for Petitioner(s) : 1,
MR K.L. PANDYA, APP for Respondent(s) : 1,
MR PRASHANT G DESAI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 22/12/2005

ORAL JUDGMENT

1. The first petition (SCA No. 3429 of 1992) invoking Article 226 of the Constitution is filed with a prayer to set aside the orders passed by the respondent Nos. 1 and

2 on 13.5.1992 and 15.5.1992 whereby the State Government in its Urban Development and Urban Housing Department had suspended the resolution of the Standing Committee of respondent No.2 pursuant to which respondent No.2 had invoked the provisions of sub-section (2) of Section 59 of the Bombay Provincial Municipal Corporations Act, 1949 (“BPMC Act” for short) informing the petitioner that he had incurred disqualification for being a municipal servant. By an amendment after the first interim order dated 1.7.1992, the petitioner has also challenged the decision dated 6.8.1992 of the State Government rendered after the hearing accorded to the petitioner by the interim order.

2. Although the litigation has a chequered history of several previous litigations and interim orders which were carried up to the Supreme Court, the relevant facts for deciding the issues before this Court are that the petitioner was serving under respondent No.2- Baroda Municipal Corporation (“BMC” for short) since 16.8.1969 till he was suspended on 27.7.1988 pending departmental inquiry on the allegation that he had defrauded the Corporation in collusion with his brother in the contract of supplying newspapers and magazines. After chargesheet and regular departmental inquiry, the finding of the Inquiry Officer holding the petitioner guilty of several acts of misconduct was accepted and an order dated 1.10.1990 was passed to remove him from service.

2.1. The petitioner had preferred an appeal from the

above order under Section 56(4) of the BMPC Act before the Standing Committee of BMC which entertained the appeal despite it being barred by limitation and modified the order of punishment by resolving that the petitioner should be reinstated with continuity of service but without any wages for the period from the date of suspension till the date of reinstatement, treating the payment of subsistence allowance as wages for the intervening period. That resolution of the Standing Committee was suspended by the impugned order dated 13.5.1992 made by the State Government in exercise of its powers under Section 451 of the BPMC Act. When the petitioner approached this Court by way of this petition, the interim order dated 1.7.1992 was passed directing the petitioner to approach the State Government under Section 451(3) of the BPMC Act and further directing that the hearing shall be given to him by the officer other than the officer who had made the order dated 13.5.1992. Thus, after the hearing being given to the petitioner, the final order dated 6.8.1992 was made refusing to review the earlier order and rejecting the appeal of the petitioner. That order recorded the contentions raised by the petitioner and, after describing in detail the charges fully or partially proved against the petitioner, it held that the petitioner had incurred disqualification under Section 59 of the BPMC Act and the resolution of the Standing Committee directing reinstatement of the petitioner was unreasonable and likely to encourage indiscipline. The argument that the provisions of Section 451 were not applicable in such cases was in terms rejected.

The earlier order dated 14th May, 1992 on the basis of which the consequential order dated 15.5.1992 was made had also recorded that the State Government had, after considering all the aspects of the matter carefully and thoroughly, formed the opinion that if the resolution of the Standing Committee of BMC were not set aside and in the result if the petitioner against whom grave charges of misconduct were held proved partly (one charge fully) and who had incurred disqualification under Section 59 of the BPMC Act from being municipal servant were continued in service, indiscipline and corruption would spread in the Municipal Corporation leading to collapse of the municipal administration and consequently cause annoyance and/or injury to the public of Vadodara.

3. Learned counsel Mr. Pradip Patel, appearing for the petitioner, argued on the basis of a fresh affidavit-in-rejoinder that the State Government had no power under Section 451 of the BPMC Act to interfere with the orders passed by the appellate authority under Section 56(4) of the Act. That the powers exercised by the Standing Committee under Section 56(4) of the Act were in the realm of the disciplinary action under Section 56 of the Act and the order for imposition of some lesser penalty made by the appellate authority was conclusive; meaning that it cannot be carried further to the State Government for exercise of the powers under Section 451 of the Act. It was submitted that the powers of the State Government under Section 451 of the Act were for controlling the administrative actions of the Municipal Corporation and

not for interfering with the disciplinary action/s taken under Section 56 of the Act. He also submitted that the Standing Committee of the BMC had passed an appropriate resolution after giving to the Commissioner of the Corporation an opportunity of being heard and the State Government was not justified in setting at naught the resolutions of the Standing Committee in exercise of the powers under Section 451 of the Act which are for control of the Municipal Corporation as a whole.

4. The scheme of the statutory provisions applicable in the facts of the present case is to be found in Chapter IV and Chapter XXVIII of the BPMC Act. In Chapter IV, dealing with the subject of Municipal Officers and servants and their conditions of service, it is provided in Section 56 that the competent authority may, subject to the provisions of the Act, impose any of the penalties specified in sub-section (2) and the provision for appeal is made in the following terms in sub-section (4) of Section 56:

> *'Subject to the provisions of clause (d) of the proviso to sub-section (1), any municipal officer or servant who is reduced, removed or dismissed by any authority other than the Corporation may, within one month of the communication to him of the order of reduction, removal or dismissal, appeal to the authority immediately superior to the authority which imposed the penalty and the appellate authority may, after obtaining the remarks of the authority which imposed the penalty, either confirm the order passed or substitute for it such order as it considers just including an order for the imposition of some lesser penalty, and effect shall forthwith be given to any order passed by the appellate authority which shall be conclusive.'*

Provided that ....

(5) ......'

Section 451 falling in Chapter XXVIII of the BPMC Act reads as under:-

> *"(1) If the State Government is of opinion that the execution of any resolution or order of the Corporation or of any other municipal authority or officer subordinate thereto or the doing of any act which is about to be done or is being done by or on behalf of the Corporation is in contravention of or in excess of the powers conferred by this Act or of any other law for the time being in force or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons, the State Government may, by order in writing, suspend the execution of such resolution or order, or prohibit the doing of any such act.*
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> *(2)A copy of such order shall forthwith be sent to the Corporation by the State Government.*
>
> *(3)The State Government may at any time, on representation by the Corporation or otherwise, revise, modify or revoke an order passed under sub-section (1)."*

5. It is clear from the above discussion of the averments and contentions of the petitioner that he has challenged the successive orders dated 14.5.1992 and 6.8.1992 of the Government on the grounds that they lack in authority of law and are improper or unjustified. The first argument that the powers of the State Government, under Section 451 of the BPMC Act, could not have been invoked to suspend an order or resolution made under Section 56(4) of the Act, was not supported by any legal logic or judgment. On the contrary, in case of the petitioner himself, in

Letters Patent Appeal No. 165 of 1992, a Division Bench of this Court (Coram: S.B. Majmudar, Acting CJ and Y.B. Bhatt, J) had, in the order dated 8.4.1992, observed that, if in future , the Commissioner was able to obtain any order from the State Government under Section 451 upsetting the resolution of the Standing Committee in favour of the original petitioner, then on the basis of such order, the Commissioner might proceed in accordance with law. Even otherwise, the phraseology employed in Section 451 is wide enough to cover "execution of any resolution or order of the Corporation or any municipal authority or officer" or "doing of any act which is about to be done or is being done in contravention of or in excess of the powers conferred by the Act or of any other law" which "is likely to lead to a breach of peace or to cause injury or annoyance to the public". In view of such plenary powers conferred upon the State Government to suspend or prohibit any action, the finality given to the order of the appellate authority in sub-section (4) of Section 56 has to be harmoniously read to mean that the order of the appellate authority shall be conclusive only as far as the authorities constituted under the BPMC Act were concerned. But, that finality cannot derogate from the plenary powers of the State Government conferred by as wide the words as above. Once such power is exercised, the party adversely affected by such order is not rendered helpless but adequate provisions are made in sub-section (3) of Section 451 for the State Government to review its decision and revise, modify or revoke an order made under sub-section (1). In the

facts of the present case, that exercise is also undergone pursuant to the first interim order dated 1.7.1992. Therefore, what can be challenged now is only the order dated 6.8.1992 and that order could not be assailed as illegal, arbitrary or perverse in view of the fact that even while deciding the appeal of the petitioner in his favour, the Standing Committee had not set aside or interfered with the findings recorded by the Inquiry Officer according to which the petitioner was found to be guilty of several acts of serious misconduct rendering him not only liable for punishment but disqualified for being a municipal officer or servant under the provisions of Section 59 of the BPMC Act. That also justifies the impugned order dated 6.8.1992 because the decision of the Standing Committee to reinstate a person who had incurred disqualification would be in direct contravention of the BPMC Act.

6. In the above facts and for the reasons discussed hereinabove, the impugned orders of the State Government are held to be legal and the petitioner is held to be not entitled to the reliefs as prayed in the petition.

7. The second petition of the petitioner with the prayers for post-retirement benefits admittedly did not survive in view of rejection of the first petition. Accordingly, both the petitions are rejected and Rule issued therein are discharged with no order as to costs.

Sd/-

omkar (D.H. WAGHELA, J.)